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(702) 382-2600
Attorneys for Debtors

E-FILED

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re

**TODD LELAND ALLEN and
CATHLEEN ADELE ALLEN,**

Debtors

Case No. BK-09-28605-lbr
Chapter 13
TRUSTEE: Rick A. Yarnall

Hearing Date: 03/31/2010
Hearing Time: 10:00 a.m.

OPPOSITION TO MOTION FOR RELIEF FROM AUTOMATIC STAY

Comes Now, Debtors, Todd Leland Allen and Cathleen Adele Allen, by and through their legal counsel, David M. Crosby, of the law firm Crosby & Associates, respectfully oppose the **Motion for Relief From Automatic Stay** filed by U.S. Bank, N.A., for the reason that Allens are presently in a loan modification procedure in which they are in full compliance and in hopes of resolving financial matters relative to their home as per attached documentation of same.

There should be no Relief From Automatic Stay pending completion of the modification process.

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1 DATED this 22nd day of March, 2010.

2 CROSBY & ASSOCIATES

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4 By: /s/ David M. Crosby

5 DAVID M. CROSBY, ESQ.

6 Nevada Bar No. 003499

7 711 S. 8th St.

8 Las Vegas, Nevada 89101

9 Attorneys for Debtor

CERTIFICATE OF MAILING

I, the undersigned, an employee of the Crosby & Associates, hereby certify that on the 22nd day of March, 2010, I deposited in the United States Mail, first class mail, postage pre-paid, a true and correct copy of the **Opposition to Motion for Relief from Automatic Stay** to all parties listed below:

Rick A. Yarnall
701 Bridger Avenue, Suite 820
Las Vegas, NV 89101

WILDE & ASSOCIATES
Gregory L. Wilde, Esq.
212 South Jones Blvd.
Las Vegas, NV 89107

/s/ Candy Khan

An employee of
CROSBY & ASSOCIATES



All of USbank serving your Home Mortgage

TODD ALLEN
PO BOX 493
LOGANDALE NV 89021-0493

U.S. BANK HOME MORTGAGE
DEFAULT RESOLUTION-HAMP
P.O. BOX 20005

Trial Period Payment Coupon 3

LOAN NUMBER	7884796022
TRIAL PERIOD PAYMENT AMOUNT	\$2063.38
TRIAL PERIOD PAYMENT DUE ON	03/01/10

If your mortgage payment is automatically drafted from your bank account or is paid automatically by an online bill payment service, you will need to cancel or suspend that process prior to returning your trial period payment and documents. If your mortgage payment has recently been debited from your bank account by one of these services, please contact our office at 1-800-365-7900 to further discuss your trial period payments. Thank you!

Please Note: If the trial period payment is not received within

Name Todd & Catherine Allen 2056

Account No 7500 496 850 Date 3/1/10

Pay to the Order of US Bank of Nevada \$ 2063.38

Two thousand, sixty three and 38/100 Dollars

For U.S. Bank MP

12224017781 7500496850

94-1771/1224 01

Bank of Nevada
2700 West Sahara Ave. • 702-246-4200
Las Vegas, NV 89102

003 00001 01 PAGE: 2
ACCOUNT: 7500496850 02/10/2010
DOCUMENTS: 12

Proof of mtg pymts

Name <u>Todd J. Ralston Allen</u>		2054
Account No <u>7500496850</u>		DATE <u>1/24/10</u>
Pay to the Order of <u>US Bank</u>	AMOUNT <u>\$ 244.38</u>	MEMO <u>1/24/10</u>
For <u>Two Thousand Sixty Four and 38/100 Dollars</u>		DATE <u>FEB 01 2010</u>
MICR LINE <u>⑆ 7884775022 ⑈</u>		
FOR DEPOSIT ONLY		

2054 - \$2,063.38 - 02/08/2010

1793 - \$2,435.92 - 01/07/2010

Name	Todd & Catherine Allen	7884795022	1793
Account No	7500496850	12/28/09	DATE
Pay to the Order of	US Bank of Nevada	\$ 2435.92	
	Twenty Four Hundred & Thirty Five and 92/100		
BANK OF NEVADA		DEC 31 2009	
For	Cat		
⑆ 2240 17781 7500496850 ⑈		⑈ 0000243592 ⑈	

LM105

Investor Loan # 788479502

U.S. Bank Loan # 7884795022

HOME AFFORDABLE MODIFICATION TRIAL PERIOD PLAN (Step One of Two-Step Documentation Process)

Trial Period Plan Effective Date: 01/01/10

Borrower: Todd Allen

Lender: U.S. Bank Home Mortgage

Date of first lien Security Instrument Mortgage and Note: 06-30-08

Loan Number: 7884795022

Property Address: 2325 WELLS AVE LOGANDALE NV 89021

If I am in compliance with this Trial Period Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Home Affordable Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Plan and not defined have the meaning given to them in the Loan Documents.

If I have not already done so, I am providing confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all of my income (except that I understand that I am not required to disclose any child support or alimony unless I wish to have such income considered) to determine whether I qualify for the offer described in this Plan (the "Offer"). I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer. This Plan will not take effect unless and until both I and the Lender sign it and Lender provides me with a copy of this Plan with the Lender's signature.

1. **My Representations.** I certify, represent to Lender and agree:

- A. I am unable to afford my mortgage payments for the reasons indicated in my Hardship Affidavit and as a result, (i) I am either in default or believe I will be in default under the Loan Documents in the near future, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;
- B. I live in the Property as my principal residence, and the Property has not been condemned;
- C. There has been no change in the ownership of the Property since I signed the Loan Documents;
- D. I am providing or already have provided documentation for **all** income that I receive (and I understand that I am not required to disclose any child support or alimony that I receive, unless I wish to have such income considered to qualify for the Offer);
- E. Under penalty of perjury, all documents and information I have provided to Lender pursuant to this Plan, including the documents and information regarding my eligibility for the program, are true and correct; and
- F. If Lender requires me to obtain credit counseling, I will do so.
- G. If I previously was discharged in a Chapter 7 Bankruptcy proceeding subsequent to the execution of these Loan Documents, the Lender agreed that I will not have personal liability on the debt pursuant to this Plan.

H. If my account is, or becomes, active in Foreclosure before I receive the fully executed copy of the Trial Agreement I will pay ALL of the monthly Trial Payments via certified funds.

2. **The Trial Period Plan.** On or before each of the following due dates, I will pay the Lender the amount set forth below ("Trial Period Payment"), which includes payment for Escrow Items, including real estate taxes, insurance premiums and other fees, if any, of U.S. \$2063.38.

Trial Period Payment#	Trial Period Payment	Due Date On or Before
1	2063.38	01/01/10
2	2063.38	02/01/10
3	2063.38	03/01/10

The Trial Period Payment is an estimate of the payment that will be required under the modified loan terms, which may be finalized in accordance with Section 3 below. The actual payments under the modified loan terms, however, may be different.

***I understand that my first payment and this signed Trial Period Plan must be received by the Lender no later than 01/01/10 or I may not be accepted into the Home Affordable Modification Program.**

I agree that during the period (the "Trial Period") commencing on the Trial Period Effective Date and ending on the earlier of: (i) the first day of the month following the month in which the last Trial Period Payment is due (the "Modification Effective Date") or (ii) termination of this Plan, I understand and acknowledge that:

- A. TIME IS OF THE ESSENCE under this Plan; This means I must make all payments on or before the days that they are due;
- B. Except as set forth in Section 2.C. below, the Lender will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Plan, but any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended if this Plan terminates, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by applicable law;
- C. If my property is located in Georgia, Hawaii, Missouri, or Virginia and a foreclosure sale is currently scheduled, the foreclosure sale will not be suspended and the lender may foreclose if I have not made each and every Trial Period Payment that is due through the end of the month preceding the month in which the foreclosure sale is scheduled to occur. If a foreclosure sale occurs pursuant to this Section 2.C., this agreement shall be deemed terminated;
- D. The Lender will hold the payments received during the Trial Period in a non-interest bearing account until they total an amount that is enough to pay my oldest delinquent monthly payment on my loan in full. I understand the Lender will not pay me interest on the amounts held in the account. If there is any remaining money after such payment is applied, such remaining funds will be held by the Lender and not posted to my account until they total an amount that is enough to pay the next oldest delinquent monthly payment in full;
- E. When the Lender accepts and posts a payment during the Trial Period it will be without prejudice to, and will not be deemed a waiver of, the acceleration of the loan or foreclosure action and related activities and shall not constitute a cure of my default under the Loan Documents unless such payments are sufficient to completely cure my entire default under the Loan Documents;
- F. If prior to the Modification Effective Date, (i) the Lender does not provide me a fully executed

copy of this Plan and the Modification Agreement; (ii) I have not made the Trial Period payments required under Section 2 of this Plan; or (iii) the Lender determines that any of my representations in Section 1 were not true and correct as of the date I signed this Plan or are no longer true and correct at any time during the Trial Period; or (iv) I do not provide all information and documentation required by Lender, the Loan Documents will not be modified and this Plan will terminate. In this event, the Lender will have all of the rights and remedies provided by the Loan Documents, and any payment I make under this Plan shall be applied to amounts I owe under the Loan Documents and shall not be refunded to me; and

- G. I understand that the Plan is not a modification of the Loan Documents and that the Loan Documents will not be modified unless and until (i) I meet all of the conditions required for modification, (ii) I receive a fully executed copy of a Modification Agreement, and (iii) the Modification Effective Date has passed. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if the Lender determines that I do not qualify or if I fail to meet any one of the requirements under this Plan. If, under the Lender's procedures, a title endorsement(s) and/or subordination agreement(s) are required to ensure that the modified Loan Documents retain first lien position and are fully enforceable, I understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents or to execute the Modification Agreement if the Lender has not received an acceptable title endorsement(s) and/or subordination agreement(s) from other lien holders, as Lender determines necessary.

3. **The Modification.** I understand that once Lender is able to determine the final amounts of unpaid interest and any other delinquent amounts (except late charges) to be added to my loan balance and after deducting from my loan balance any remaining money held at the end of the Trial Period under Section 2.D. above, the Lender will determine the new payment amount. If (1) my representations in Section 1 were and continue to be true in all material respects; (2) I comply with the requirements in Section 2; (3) I provide the Lender with all required information and documentation; and (4) the Lender determines that I qualify, the Lender will send me a Modification Agreement for my signature which will modify my Loan Documents as necessary to reflect this new payment amount and waive any unpaid late charges accrued to date. The Modification Agreement will provide that, as of the Modification Effective Date, a buyer or transferee of the Property will not be permitted, under any circumstance, to assume the loan unless permitted by applicable State or Federal law, rules or regulations. This Plan shall terminate the day before the Modification Effective Date and the Loan Documents, as modified by a fully executed Modification Agreement, shall govern the terms between the Lender and me for the remaining term of the loan. Provided I make timely payments during the Trial Period and both the Lender and I execute the Modification Agreement, I understand that my first modified payment will be due on the Modification Effective Date (i.e., on the first day of the month following the month in which the last Trial Period Payment is due).

4. **Additional Agreements.** I agree to the following:

- A. That all persons who signed the Loan Documents or their authorized representative(s) have signed this Plan, unless (i) a borrower or co-borrower is deceased; (ii) the borrower and co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property need not sign this Plan (although the non-signing spouse may continue to be held liable for the obligation under the Loan Documents); or (iii) the Lender has waived this requirement in writing.
- B. To comply, except to the extent that they are modified by this Plan, with all covenants, agreements, and requirements of Loan Documents, including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my loan.
- C. If Lender may establish an escrow account under applicable law, this Plan constitutes notice that the Lender's waiver as to payment of Escrow Items, if any, has been revoked, I have been advised of the amount needed to fund my escrow account and I agree to the

establishment of an escrow account. If the Loan Documents do not currently have escrow account provisions that govern, among other things, the collection, posting and payment of Escrow Items to and from the escrow account, the Lender will include provisions in my Modification Agreement that are similar to the escrow account provisions in the Fannie Mae/Freddie Mac Uniform Instrument for the state in which I live.

- D. That all terms and provisions of the Loan Documents remain in full force and effect; nothing in this Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents.
- E. That I will execute such other and further documents as may be reasonably necessary to either (i) consummate the terms and conditions of this Plan; or (ii) correct the terms and conditions of this Plan if an error is discovered.
- F. That Lender will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. I understand and consent to the disclosure of my personal information and the terms of this Trial Period Plan and the Modification Agreement by Lender to (a) the U.S. Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Home Affordability and Stability Plan; (c) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (d) companies that perform support services for the Home Affordable Modification Program and the Second Lien Modification Program; and (e) any HUD certified housing counselor.
- G. That, as of the Trial Period Plan Effective Date, I understand that the Lender will only allow the transfer and assumption of this Trial Period Plan to a transferee of my property in the case of my death, divorce or marriage to the same extent as permitted under the Garn St. Germain Act, 12 U.S.C. Section 1701j-3. This Plan may not, under any other circumstances, be assigned to, or assumed by, a buyer or transferee of the Property.

In Witness Whereof, the Lender and I have executed this Plan.

Lender

By:

Date

Todd L. Allen (Seal)
Borrower

12/15/09

Date

C. T. A. (Seal)
Borrower

12/15/09

Date



All of us serving you™

5-726-46705-0000004-001-2-000-000-000-000

LM103

November 27, 2009

TODD ALLEN
PO BOX 493
LOGANDALE NV 89021-0493
Mortgage Loan # 7884795022

What You Must Do Now

To accept this offer, please send all of the requested information to U.S. Bank Home Mortgage - Default Resolution at, 4801 Frederica Street, Owensboro, KY 42301.

- * Two copies of the enclosed Workout Plan signed by all borrowers.
- * Your first month's trial period payment in the amount of \$2063.38.
- * The enclosed Hardship Affidavit completed and signed by all borrowers (no notary required),
- * A signed and dated copy of the IRS Form 4506-T (request for Transcript of Tax Return) for each borrower. If borrowers filed a joint return only 1 form with both borrowers is required.

****Please see the enclosed list of qualifying income****

****You must send in both signed copies of the Workout Plan, all required income documentation, and your first trial period payment by this date. If you can not provide the documentation within the time frame provided, please contact us to request an extension of time to gather your documents.**

Your first trial period payment in the amount of \$2063.38 will be due on or before 01/01/10. This payment should be sent instead of, not in addition to, your normal monthly mortgage payment. If the trial period payments are made in amounts different from the amount stated, your loan may not be modified.

Escrow Account: The terms of your Workout Plan and your modification Agreement will require the servicer to set aside a portion of your new monthly payment in an escrow account for payment of your property taxes, insurance premiums and other required fees. Your current loan may also require escrows. If it does not, the previous waiver of escrows is cancelled under your Workout Plan. U.S. Bank will draw on this account to pay your real estate taxes and insurance premiums as they come due. Please note that your escrow payment amount may adjust annually as permitted by law. This means that your monthly payment may change after the first year. Your initial monthly escrow payment will be \$372.54.

Escrow Shortage: Due to the timing of your tax and insurance payments we have determined that there is a shortage of funds in your account in the amount of \$1139.86. You may pay this amount over a five year (60 months) period. This monthly payment has already been included in the monthly escrow payment stated above. If you wish to pay the total shortage now, please contact us at 1-800-365-7772.

Other information:

* If you cannot afford the trial period payments shown above, but want to remain in your home or vacate the property and avoid foreclosure, please call us at 1-800-365-7900. We may be able to help you.

Credit Reporting: If you were delinquent on your scheduled mortgage payments at the time your trial plan begins, we will continue to report your account to the credit bureaus as delinquent. We will also note that you are paying under a partial payment agreement. If you were current on your scheduled mortgage payment at the time your trial plan begins and you have made your trial period payment for the reporting month within the month in which it was due, we will report your account to the credit bureaus as current, with the added comment that you are paying under a partial payment agreement.

This is an attempt to collect a debt, any information received will be used for that purpose.

**** Notice**** In the event you previously filed a chapter 7 bankruptcy and did not reaffirm this mortgage debt your personal liability for the related obligation has been discharged. This is not an attempt to collect the debt or to seek any agreement attempting to create personal liability for this debt or to affect the bankruptcy discharge of this debt.